

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Patrick Yu	Team: Squad #6	CCRB Case #: 201404174	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Wednesday, 04/30/2014 3:00 PM	Location of Incident: 169-11 Union Turnpike	Precinct: 107	18 Mo. SOL 10/30/2015	EO SOL 10/30/2015	
Date/Time CV Reported Wed, 04/30/2014 3:30 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Wed, 04/30/2014 3:30 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Michael Gannon	09976	934896	107 PCT
2. POM Colin Sparks	06858	947508	107 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Michael Gannon	Abuse: PO Michael Gannon stopped § 87(2)(b)	
B.POM Colin Sparks	Abuse: PO Colin Sparks stopped § 87(2)(b)	
C.POM Colin Sparks	Abuse: PO Colin Sparks searched § 87(2)(b)	
D.POM Colin Sparks	Abuse: PO Colin Sparks frisked § 87(2)(b)	

Case Summary

On April 30, 2014, at approximately 3 p.m., PO Sparks and PO Gannon stopped § 87(2)(b) inside his parked vehicle in front of 169-11 Union Turnpike, in Queens (**Allegation A and Allegation B**). PO Sparks requested § 87(2)(b) to unzip his sweater and asked what was inside (**Allegation C**). § 87(2)(b) complied and noted that he wore a white shirt underneath. PO Sparks requested § 87(2)(b) to exit his vehicle then PO Sparks proceeded to frisk § 87(2)(b) (**Allegation D**). § 87(2)(b) was not arrested or issued any summonses during the incident.

This case was reassigned to Inv. Patrick Yu from Inv. Simone Cherry on December 4, 2014.

Mediation, Civil and Criminal Histories

§ 87(2)(b) rejected mediation (see encl. 9E). § 87(2)(b) did not file a Notice of Claim for this incident (see encl. 21B). [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Civilian and Officer CCRB Histories

- § 87(2)(b) filed one previous CCRB complaint in 2003. § 87(2)(b)
- PO Sparks has been a member of the NYPD for six years and has no prior CCRB cases (see encl.5A).
- PO Gannon has been a member of the NYPD for ten years and has had two prior CCRB cases with no substantiated allegations. § 87(2)(g)

Finding and Recommendations

Allegation A--Abuse of Authority: PO Michael Gannon stopped § 87(2)(b)

Allegation B--Abuse of Authority: PO Colin Sparks stopped § 87(2)(b)

Allegation D--Abuse of Authority: PO Colin Sparks frisked § 87(2)(b)

It is undisputed that PO Sparks and PO Gannon stopped § 87(2)(b) at the location of 164-24 65th Avenue, in Queens. PO Sparks frisked § 87(2)(b) during the incident.

In § 87(2)(b)'s testimony, he stated that at the time of incident, he was wearing a navy long trench coat, blue cap, blue sweater, light blue cargo khaki pants, and white sneakers (see encl. 9F-9G) PO Sparks and PO Gannon approached his vehicle and they requested for § 87(2)(b)'s documents for the vehicle and identification. § 87(2)(b) was then instructed to exit his vehicle because he fit the physical description of a robbery suspect. § 87(2)(b) exited the vehicle and PO Sparks frisked § 87(2)(b). § 87(2)(b) described the frisk as a pat down of his back, legs, and outer clothing. Approximately 10 or 15 minutes later, Sgt. Busby arrived in an unmarked vehicle with a driver and a female in the rear seat. § 87(2)(b) was not identified as the robbery suspect and the officers left the scene shortly afterwards (see encl. 9D-9E).

Based on PO Sparks' and PO Gannon's testimony, there was a report of a robbery at the location of 164-24 65th Avenue, in Queens. PO Sparks recalled the description of the robbery suspect to be a white male, wearing a black jacket and blue shirt. PO Gannon described the robbery suspect as a 6 foot tall male, wearing a black leather jacket with a blue shirt under, and blue jeans. At approximately 2:55 p.m., the two officers observed § 87(2)(b) a few blocks away from the crime location. Both officers stated that § 87(2)(b) fit the exact description of the robbery suspect. With no more than 30 seconds of observation, PO Sparks and PO Gannon decided to stop § 87(2)(b) as he was entering his vehicle. When the officers approached, § 87(2)(b) was already in the vehicle.

§ 87(2)(b) was then asked to exit his vehicles by the officers since he matched the description of the robbery suspect. PO Sparks stated that he suspected § 87(2)(b) may have been armed. Based on the report of a violent crime, § 87(2)(b) matched the description, and two confirmed callers for his own safety PO Sparks frisked § 87(2)(b). PO Gannon corroborated this, stating that there was a possibly § 87(2)(b) may have been armed based on the violent crime suspected, but he did not see any bulges on § 87(2)(b)'s person. PO Sparks described the frisk as a pat down of § 87(2)(b)'s waist and pant pockets. PO Gannon observed PO Sparks frisking § 87(2)(b)'s jacket pockets, waistband, and pant pockets. The frisk lasted for approximately 10 seconds. Both officers stated that nothing was removed from § 87(2)(b)'s pockets as a result of the frisk. Additionally, PO Gannon stated that § 87(2)(b) maintained an angry demeanor throughout the encounter because he was not satisfied with the reason for the stop. PO Sparks § 87(2)(g) § 87(2)(b) stating that § 87(2)(b) was very defensive throughout the incident. A showup was done towards the end of the incident and § 87(2)(b) was not identified as the perpetrator (see encl. 10E and 12F-12G).

PO Sparks completed a Stop, Question, and Frisk report for § 87(2)(b) in regards. The following circumstances to the stop were documented: § 87(2)(b) was frisked because a violent crime was committed, he was being combative, there was a report from a victim/witness, area has high incidence of reported offense, time of day/day of week corresponds to reports of criminal activity, and the proximity to crime location (see encl. 11A).

An officer has reasonable suspicion to stop and detain a person based upon the general description of the perpetrator, the person's close proximity to the site of the crime, and the short passage of time between the crime and the observation of the defendant, People v. Bennett, 37 A.D.3d 483 (1976) (see encl. 3A-3B). An officer has the right to detain and frisk an individual who he reasonably suspects has committed, is committing or is about to commit a serious and violent crime. In such circumstances, it is unnecessary to particularize an independent source for the belief of danger People v. Mack, 26 N.Y.2d 311 (1970) (see encl. 2A-2E). Moreover, an officer has the right to frisk a detained individual fitting the description of a violent crime pending the showup identification by the complainant and given the nature of the crime being investigated People v. Torres, 239 A.D.2d 154 (1997) (see encl. 1A).

PO Sparks and PO Gannon stopped § 87(2)(b) based on the radio call of a robbery at gunpoint nearby. EVENT #§ 87(2)(b) confirmed of the aforementioned account (see encl. 14A). According to the EVENT, the call was transmitted over the radio at 2:13 p.m. PO Sparks and PO Gannon documented in their memo book entries that they stopped § 87(2)(b) at 2:55 p.m. (see encl. 10B and 12B-12C). With approximately 42 minutes elapsing from the time of robbery and the time § 87(2)(b) was stopped, § 87(2)(g) Additionally, § 87(2)(b) was within one mile (approximately 4 minutes) from the location of the robbery (see encl. 6A-6B). Based on § 87(2)(b)'s testimony, the description of his own clothing matches the description relayed over the radio (see encl. 9D-9E) PO Sparks and PO Gannon documented § 87(2)(b) to have a relatively close match to the description relayed over the radio. Additionally, while PO Gannon did not record § 87(2)(b)'s physical description in his memo book, during his interview he was able to provide a relatively close description similar PO Sparks' description of § 87(2)(b). However, EVENT #§ 87(2)(b) mentioned that the suspect was a male white wearing a red hat, brown leather, 5'9" tall, with a belly, heavy set, displayed gun, took money and alcohol (see encl. 14A). PO Sparks stated that there was a separate radio run from a nearby precinct that provided a more detailed description. The investigation was unable to retrieve the EVENT that PO Sparks referred to (see encl. 16A and 17A). § 87(2)(g)

§ 87(2)(g)

[REDACTED]

Allegation C—Abuse of Authority: PO Colin Sparks searched § 87(2)(b)

§ 87(2)(g) [REDACTED].

In § 87(2)(b)'s testimony, PO Sparks instructed him to unzip his blue sweater and asked him what was underneath the sweater. § 87(2)(b) unzipped his sweater and pulled it forward in order for PO Sparks to observe. § 87(2)(b) told PO Sparks that he wore a white cotton t-shirt underneath his sweater (see encl. 9D-9E)

PO Sparks denied instructing § 87(2)(b) to unzip his sweater and asking § 87(2)(b) what was underneath. Additionally, PO Sparks denied searching § 87(2)(b). Additionally, PO Gannon did not recall seeing PO Sparks look under § 87(2)(b)'s sweater (see encl. 10E and 12F-12G).

When an officer reasonably suspects that he is in danger of physical injury, he may frisk such person for a deadly weapon **People v. Debour** 40 N.Y.2d 210 (976) (see encl. 4A-4K).

§ 87(2)(g)

[REDACTED]

Team: _____

Investigator: _____
Signature Print Date

Supervisor: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date